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10 **E-filed 11/1/05**
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15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 SAN JOSE DIVISION

18 HORTA, LLC,

19 CASE NO. C 02-04086 JF (RS)

20 Plaintiff,

21 [Related Case Nos. C 00-20018 JF
22 and C 05-03778 JF]

23 v.

24 CITY OF SAN JOSE,

25 **STIPULATION AND [PROPOSED] ORDER
26 CONSOLIDATING HEARING DATES ON
27 HORTA, LLC'S MOTION FOR SUMMARY
28 JUDGMENT AND FEDERAL AVIATION
ADMINISTRATION'S MOTIONS TO
QUASH**

Defendant.

29 [Civil Local Rule 6-2]

30 Judge: Hon. Jeremy Fogel
31 Complaint: August 23, 2002

STIPULATION

WHEREAS, on February 28, 2005, the Court entered judgment in this action;

WHEREAS, on March 14, 2005, plaintiff Horta, LLC ("Horta") filed its Motion to Reconsider, Reopen, and Amend Judgment (the "Motion to Amend") and set it for hearing on May 6, 2005;

WHEREAS, on May 6, 2005, the Court continued the hearing on the Motion to Amend to permit Horta to conduct additional discovery relating to issues presented in the Motion to Amend;

WHEREAS, Horta has served discovery on Federal Aviation Administration (“FAA”) consisting of document requests and requests for deposition testimony relating to issues presented in the Motion to Amend in the form of subpoenas issued pursuant to Rule 45 of the Federal Rules of Civil Procedure, as well as written requests pursuant to 49 C.F.R. §§ 9.1 *et seq.*;

WHEREAS, the FAA has produced some documents but disputes its obligation to provide additional documents and to make subpoenaed witnesses available for deposition;

WHEREAS, Horta has filed a separate action to enforce its right to the requested discovery, entitled *Horta, LLC v. Federal Aviation Administration*, United States District Court, Northern District of California, Case No. C 05-03778 JF (RS) (the “Horta/FAA Action”), which case has been related to this action;

WHEREAS, the FAA has filed two motions to quash Horta's subpoenas issued pursuant to Rule 45 of the Federal Rules of Civil Procedure for documents and deposition testimony, which are currently set for hearing in this action before the Honorable Richard Seeborg on *November 23, 2005* (collectively, the "Motions to Quash");

WHEREAS, Horta has filed a Motion for Summary Judgment and Permanent Injunction in the Horta/FAA Action seeking to compel the production of documents and deposition testimony relating to issues presented in the Motion to Amend, which is set for hearing before the Honorable Jeremy Fogel on *December 16, 2005* (the “Motion for Summary Judgment”);

WHEREAS, the issues presented, and underlying facts, in the FAA's Motions to Quash and Horta's Motion for Summary Judgment are identical;

WHEREAS, if the Motions to Quash and the Motion for Summary Judgment were adjudicated by two different judges, there is a possibility of inconsistent rulings;

WHEREAS, Horta and the FAA desire to conserve judicial resources and avoid the possibility of inconsistent rulings by having the Motions to Quash and the Motion for Summary Judgment concurrently heard and adjudicated by the Honorable Jeremy Fogel;

THEREFORE, IT IS HEREBY STIPULATED by and between Horta and the FAA, and subject to the approval of the Court, as follows:

1. The FAA's Motions to Quash and Horta's Motion for Summary Judgment shall be consolidated before the Honorable Jeremy Fogel;

2. The Motions to Quash and the Motion for Summary Judgment shall be heard together on December 16, 2005 at 9:00 a.m., or as soon thereafter as the matter may be heard, in the courtroom of the Honorable Jeremy Fogel, located at 280 South First Street, San Jose, California;

3. The briefing schedule for the Motions to Quash and the Motion for Summary Judgment shall run concurrently and be determined according to the December 16, 2005 hearing date. Specifically, any oppositions to the respective motions shall be filed no later than November 23, 2005, and any briefs in reply shall be filed no later than December 2, 2005;

4. The deadline for the defendants in the Horta/FAA Action to answer, move, or otherwise respond to the First Amended Complaint filed in that action shall be extended to a date ten (10) court days after the Court's ruling on the Motions to Quash and the Motion for Summary Judgment.

Dated: October 31, 2005

DLA PIPER RUDNICK GRAY CARY US LLP

By Don Frey
JAMES M. CHADWICK
DIANA NG FUNG
Attorneys for Plaintiff HC

1 Dated: October 31, 2005

KEVIN V. RYAN
United States Attorney

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PURSUANT TO STIPULATION, IT IS SO ORDERED. The hearings on FAA's Motions to Quash and Horta's Motion for Summary Judgment shall be concurrently set for December 16, 2005 at 9:00 a.m. in the courtroom of the Honorable Jeremy Fogel, located at 280 South First Street, San Jose, California. Any opposition to these respective motions shall be filed no later than November 23, 2005, and any briefs in reply shall be filed no later than December 2, 2005.

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The last day for the defendants in the Horta/FAA Action to respond to the First Amended Complaint is extended to a date ten (10) court days after the Court's ruling on the FAA's Motions to Quash and Horta's Motion for Summary Judgment.

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Dated: October 11/1, 2005

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/s/electronic signature authorized

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STIPULATION AND [PROPOSED] ORDER RE HEARING DATE FOR MOTION FOR SUMMARY JUDGMENT AND MOTIONS TO QUASH—CASE NO. C 02-04086 JF

DLA PIPER RUDNICK
GRAY CARY US LLP
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TOTAL P.02

10/31/2005 MON 14:02 [TX/RX NO 6189] 002

1 Dated: October ___, 2005

KEVIN V. RYAN
United States Attorney

3 By _____

4 CLAIRE T. CORMIER
5 Assistant United States Attorney
6 Attorneys for the UNITED STATES
7 DEPARTMENT OF TRANSPORTATION
8 FEDERAL AVIATION ADMINISTRATION

9
10 **ORDER**

11 PURSUANT TO STIPULATION, IT IS SO ORDERED. The hearings on FAA's
12 Motions to Quash and Horta's Motion for Summary Judgment shall be concurrently set for
13 December 16, 2005 at 9:00 a.m. in the courtroom of the Honorable Jeremy Fogel, located at 280
14 South First Street, San Jose, California. Any opposition to these respective motions shall be filed
15 no later than November 23, 2005, and any briefs in reply shall be filed no later than December 2,
16 2005.

17 The last day for the defendants in the Horta/FAA Action to respond to the First Amended
18 Complaint is extended to a date ten (10) court days after the Court's ruling on the FAA's Motions
19 to Quash and Horta's Motion for Summary Judgment.

20 Dated: October ___, 2005

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22 JEREMY FOGEL
23 UNITED STATES DISTRICT COURT JUDGE
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